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Electronically Filed July 1st, 2023

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9 **UNITED STATES BANKRUPTCY COURT**
10 **DISTRICT OF NEVADA**

11 In re
12 MUSCLEPHARM CORPORATION,
13 Debtor.

14 Case No.: 22-14422-NMC
15 Chapter 11

16 **JW NUTRITIONAL'S STATEMENT OF**
17 **POSITION REGARDING JOINT STATUS**
18 **REPORT ON COMPETING PROPOSALS**
19 **FOR DISCOVERY AND HEARING**
20 **SCHEDULE FOR MOTION TO APPOINT**
21 **CHAPTER 11 TRUSTEE, AND STATUS**
22 **OF OTHER PENDING MATTERS**

23 This Statement of Position is submitted by, non-party, JW Nutritional, LLC (“JWN”) by
24 and through its counsel, Ghandi Deeter Blackham in response to the Joint Status Report [ECF
25 No. 636] that was filed on June 30, 2023 by Steinhilber Swanson LLP on behalf of Ryan Drexler
26 (“Drexler”), Schwartz Law, PLLC on behalf of Debtor MusclePharm Corporation (“Debtor”),
27 Garman Turner Gordon LLP on behalf of Empery Tax Efficient, LP (“Empery”), and Pachulski
Stang Ziehl & Jones LLP on behalf of the Official Committee of Unsecured Creditors (the
“Committee” and collectively with, Drexler, the Debtor, and Empery, the “Parties”), pursuant to
the Court’s June 23, 2023 Order to meet and confer about the prosecution of the *Motion for the*
Appointment of a Chapter 11 Trustee [ECF No. 447] (“Trustee Motion”), as well as the
scheduling of all other pending matters.

1 JWN is informed that the Parties participated in multiple meet and confer emails and
2 telephone calls occurred between June 27–29, 2023. Counsel for JWN did not participate in
3 these calls but was copied on the emails.

4 JWN, who has not made an appearance in regard to the Trustee Motion, considered the
5 competing positions of Drexler and the Debtor/Committee regarding the proposed discovery as
6 to the Trustee Motion. While both proposals set forth terms as to discovery that may be sought
7 against JWN, it should be noted that JWN has not consented to any of the Parties asserting a
8 position on JWN's behalf regarding the proposed discovery that may be propounded against
9 JWN. Therefore, JWN wishes to make its position clear to this Court.

10 **JWN'S STATEMENTS ON COMPETING PROPOSALS**

11 1. JWN has not made an appearance as to the Trustee Motion and does not
12 consider itself to be a "party" in the pending contested matter. To date, none of
13 the Parties have disputed JWN's position as a non-party. JWN should not be
14 treated as a "party" under the rules of discovery.

15 2. As such, JWN does not consent, and believes it would be procedurally
16 improper, to be served with discovery forms that would be served upon a
17 "Party" such as Interrogatories, Requests for Production of Documents or
18 Requests for Admissions. As a non-party, discovery upon JWN should be
19 limited to the types of discovery available upon non-party witnesses – i.e., in
20 the form of a subpoena for document production and/or a subpoena for
21 appearance for deposition testimony upon the 30(b)(6) witness of JWN.

22 3. While JWN has not made an appearance related to the contested matters in this
23 case, JWN, a critical supplier and vendor to the Debtor, agrees with the Debtor
24 and the Committee that the sale process and the trustee motion must be dual
25 tracked. There is no stay of the case pending the trustee motion and no reason
26 that the Debtor should not continue toward sale and confirmation.

27 4. JWN believes that the realities and needs of this case require the Parties and the
28 Court to consider the proportionality of the proposed competing plans.

- 1 5. Any deposition subpoena upon the 30(b)(6) witness of JWN must "describe
2 with reasonable particularity the matters for examination" as required by FRCP
3 30(b)(6).
- 4 6. JWN consents to service of the subpoena for document production upon JWN
5 and/or subpoena for appearance for deposition testimony of the 30(b)(6)
6 witness of JWN can be effectuated through counsel.
- 7 7. JWN requests a minimum of seven (7) days from the date of service of the
8 subpoena to serve any objections to the JWN subpoena, any document requests
9 therein, or any described 30(b)(6) topics for matters for examination.
- 10 8. JWN requests a minimum of ten (10) days from the date of service of the
11 subpoena to serve its responses to any subpoena for document production with
12 an agreement to work reasonably with rolling productions if necessary.
- 13 9. JWN consents the deposition of the 30(b)(6) witness of JWN during the week
14 of July 24th or July 31st. JWN requests that the 30(b)(6) designee(s) be allowed
15 to appear remotely and that any deposition of all 30(b)(6) designee(s) be limited
16 to 4 hours total.
- 17 10. Regarding privilege logs, JWN requests that the Court finds that logs of all
18 communications are unnecessary at this time (i.e. logs of privileged
19 communications between JWN and its counsel or between JWN, the Committee
20 members and counsel for the Committee need not be produced).
- 21 11. Regarding any proposed evidentiary hearing, JWN requests that if the 30(b)(6)
22 witness of JWN is called as a witness at the proposed evidentiary hearing that
23 the witness be permitted to appear and that reasonable notice of the intent to
24 call the witness be given to counsel and that reasonable accommodations as to
25 timing are made for the availability of the witness and counsel.
- 26 12. JWN is agreeable to the pre-set discovery status hearings on Tuesday, July 11th,
27 July 18th and July 25th (the "Discovery Status Hearings") to resolve any
28 discovery disputes that may arise involving JWN.

1 JWN reserves any and all rights associated with the matters before the Court.
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3 Respectfully submitted this 1st day of July, 2023.

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GHANDI DEETER BLACKHAM

By: /s/ Shara L. Larson.

Shara L. Larson, Esq.

Nevada Bar No. 7786

Attorneys for JW Nutritional, LLC

CERTIFICATE OF SERVICE

On this 1st day of July 2023, I served the following document(s):

I served the above-named document(s) by the following means to the persons listed below
(check all that apply):

X a. ECF System (You must attach the "Notice of Electronic Filing," or list all persons and addresses and attach additional paper if necessary.)

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3 **b. United States mail, postage fully prepaid** (*List all persons and addresses.*
4

5 *Attach additional paper if necessary.)*

6 **c. Personal Service** (*List persons and addresses. Attach additional paper if
7 necessary.)*

8 I personally delivered the document(s) to the persons at these addresses:

9 _____ For a party represented by an attorney, delivery was made by handing the
10 document(s) at the attorney's office with a clerk or other person in charge, or if no one is in
charge by leaving the document(s) in a conspicuous place in the office.

11 _____ For a party, delivery was made by handing the document(s) to the party or by
12 leaving the document(s) at the person's dwelling house or usual place of abode with someone
of suitable age and discretion residing there.

13 **d. By direct email (as opposed to through the ECF System)** (*List persons and
14 email addresses. Attach additional paper if necessary.)*

15 Based upon the written agreement of the parties to accept service by email or a court order, I
16 caused the document(s) to be sent to the persons at the email addresses listed below. I did
17 not receive, within a reasonable time after the transmission, any electronic message or other
indication that the transmission was unsuccessful.

18 **e. By fax transmission** (*List persons and fax numbers. Attach additional paper
19 if necessary.)*

20 Based upon the written agreement of the parties to accept service by fax transmission or a
21 court order, I faxed the document(s) to the persons at the fax numbers listed below. No error
22 was reported by the fax machine that I used. A copy of the record of the fax transmission is
23 attached.

24 **f. By messenger** (*List persons and addresses. Attach additional paper if
25 necessary.)*

26 I served the document(s) by placing them in an envelope or package addressed to the persons
27 at the addresses listed below and providing them to a messenger for service. (A declaration
28 by the messenger must be attached to this Certificate of Service.)

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of July 2023.

GHANDI DEETER BLACKHAM

/s/ Laura Schnetzer

Employee of Ghandi Deeter Blackham